

**FILED**

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**MAY 08 2003**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (1)

IN RE:

William C. Staley, Jr.,

Debtor.

C/A No. 02-15294-W

**ORDER**

Chapter 7

**ENTERED**

**MAY 08 2003**

**R. S. S.**

THIS MATTER comes before the Court upon a Motion for Contempt (the "Motion") filed by William C. Staley, Jr. (the "Debtor") on April 8, 2003. The Motion seeks damages for violation of the automatic stay against National Cash Advance ("NCA"). According to the court records, the Motion and Notice of the hearing were served upon NCA, and it made no objection nor appearance at the hearing.

**FINDINGS OF FACT**

1. Debtor filed a Chapter 7 case on December 23, 2002.
2. NCA was listed as a creditor as a result of a check given to it by Debtor in the amount of \$345.00 on August 22, 2002 in association with a cash advance or money loan (sometimes called a deferred presentment service) and was served notice of the bankruptcy case on December 28, 2002.
3. Subsequent to the filing of the case and to receiving notice of it, NCA cashed Debtor's check. This act caused a shortage of funds in the account, prevented Debtor from making his mortgage payment, and resulted in bank charges in the amount of \$45.00.
4. Despite demand for the return of the funds on March 24, 2003, NCA refused. Consequently, Debtor retained counsel and has incurred fees in the amount of \$150.00 to initiate the Motion.
5. The Chapter 7 Trustee filed a Report of No Distribution in this case on January 26, 2003.

## CONCLUSIONS OF LAW

While the postpetition presentment of a prepetition check as a negotiable instrument is not a violation of the automatic stay pursuant to 11 U.S.C. §362(b)(11) and Roete v. Smith (In re Roete), 936 F.2d 963 (7<sup>th</sup> Cir. 1991), the retention of funds as property of the estate after demand for their return may be a violation of the automatic stay. See Bolen v. Mercedes Benz, Inc. (In re Bolen), C/A No. 01-13028-W, Adv. Pro. No. 01-80333-W, slip op. at 8 (Bankr. D. S.C. Jun. 21, 2002); see also Jennings v. R & R Cars & Trucks (In re Jennings), C/A No. 01-02330-W, Adv. Pro. No. 01-80044-W, slip op. (Bankr. D. S.C. Sept. 17, 2001). “Excepting the presentment of negotiable instruments from the automatic stay and permitting the innocent transfer of estate money does not mean the estate money received postpetition may be retained.” In re Franklin, 254 B.R. 718, 721 (Bankr. W.D. Tenn. 2000) (citing Wittman v. State Farm Life Ins. Co., Inc. (In re Mills), 167 B.R. 663, 664 (Bankr. D. Kan. 1994), aff’d by 176 B.R. 924 (D. Kan. 1994)).

While the procedure for recovery cited in some cases is an adversary complaint pursuant to §§549 and 522(g) or (h), considering the small amount at issue in this case, the fact that this is a no-asset Chapter 7 case, and NCA’s default to the Motion, the Court holds that the procedure employed in this instance is adequate and that NCA’s retention of funds in payment of its prepetition debt after demand for return is a willful violation of §362(a). Therefore, the Court,

**ORDERS** the return of the funds or, in the alternative, damages in the amount of \$345.00 representing the amount of the check, additional damages in the amount of the \$45.00 bank charges, and \$150.00 as reasonable attorneys fees incurred by Debtor. No evidence justifying further actual or punitive damages was presented to the Court. Payment by NCA shall be made within ten days of the entry of this Order, or Debtor may request a further hearing at which time further damages

may be considered. Upon payment, NCA may assert an unsecured claim in the case.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,

May 8, 2003.

  
UNITED STATES BANKRUPTCY JUDGE